Supreme Court, U.S.
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No. 99-996

IN THE

Supreme Court of the United States

BRUCE LEON ROBINSON,

Petitioner,

v.

JAMES R. METTS,
SHERIFF OF LEXINGTON COUNTY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

WILBURN BREWER, JR.
THOMAS C. R. LEGARÉ, JR.*
NEXSEN PRUET JACOBS & POLLARD, LLP
Attorneys for Respondents
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

* *Counsel of Record*

157230

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

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QUESTION PRESENTED

Should this Court grant a writ of certiorari to determine whether collateral estoppel was properly applied to preclude the re-litigation of the issue of lack of probable cause in connection with Fourth Amendment claims under 42 U.S.C. § 1983, where the courts below correctly applied earlier decisions of this court in holding that the prior state court finding of probable cause to arrest was final and that the Petitioner had a full and fair opportunity to litigate the issue of probable cause?

PARTIES TO THE PROCEEDING

The parties identified by the Petitioner as being the parties before the Court of Appeals are correct as stated. However, the listing of additional parties to the proceeding in the District Court is incorrect, as none of the individuals or entities there listed were parties in the Amended Complaint upon which the District Court granted summary judgment to the Respondents.

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STATEMENT OF THE CASE

This action arises out of the arrest of the Petitioner, who was then a county correctional officer, following an investigation of allegations by an inmate that the Petitioner and another correctional officer were smuggling marijuana and cigarettes to inmates in the detention center. The Petitioner was arrested and charged with "Conspiracy to Possess With Intent to Distribute Marijuana" and "Possession With Intent to Distribute Marijuana", and was indicted by the Grand Jury on those charges and four (4) other counts arising out of the same incident. While awaiting his state court criminal trial the Petitioner filed his original Complaint in the United States District Court under 42 U.S.C. § 1983 asserting claims for, *inter alia*, illegal seizure, illegal search, and malicious prosecution. The Respondents moved to dismiss the Complaint, and at the hearing on those motions all proceedings were stayed pending resolution of the criminal charges.

Petitioner's trial on the six (6) indictments was scheduled for February 14, 1996, and on February 13, 1996 a hearing on the pre-trial motions of the Petitioner and his co-defendant, each of whom was represented by separate counsel, was held before the state trial judge. One of the motions heard was the Petitioner's motion to dismiss all charges for lack of probable cause to arrest, and during that hearing one of the Respondent arresting officers was vigorously cross examined by counsel for both the Petitioner and his co-defendant, who also offered evidence which was accepted by the court. After hearing extensive testimony and argument the state trial judge ruled that probable cause to arrest existed and denied the Petitioner's motion to dismiss.

The following day, and after the jury had been drawn, the Petitioner entered into a plea bargain whereby he was permitted to participate in a pre-trial intervention program on indictments for the two counts of "Misconduct in Office" and the two counts of "Contraband" which arose out of the same incident. At the same time, and as a part of the plea bargain, prosecution was ended without prejudice as to all counts, including the indictments for "Conspiracy to Possess With Intent to Distribute Marijuana" and "Possession With Intent to Distribute Marijuana", but with leave to re-indict on all counts if the Petitioner failed to successfully complete pre-trial intervention.

Thereafter, with leave of the District Court the Petitioner served an Amended Complaint in which he reasserted his claims under § 1983 for illegal seizure, illegal search, and malicious prosecution. The Respondents answered asserting several defenses including collateral estoppel, probable cause, and qualified immunity. The Respondents thereafter moved for summary judgment asserting, *inter alia*, that the Petitioner was collaterally estopped from relitigating the issue of probable cause, which had been decided adversely to the Petitioner in the state criminal proceedings, and that the Respondents were entitled to qualified immunity. The District Court held that, based on its review of the transcript of the pre-trial hearing on the motion to dismiss, the Petitioner had a full and fair opportunity to litigate the issue of probable cause in the state court criminal proceeding and was therefore collaterally estopped by the state court ruling from re-litigating the issue of probable cause. The District Court further held that the Respondents were entitled to qualified immunity because they had an objectively reasonable belief that the Petitioner had committed or was committing a criminal offense. On appeal, the Fourth Circuit

Court of Appeals concluded that the District Court correctly decided the issues before it and affirmed based on the reasoning of the District Court. Petitioner's subsequent petition for rehearing and rehearing *en banc* was denied.

The foregoing sets forth the pertinent factual and procedural posture of this case. To the extent that more factual specificity may be desired, the Respondents incorporate and adopt by reference the facts as set out under "Background" in the order of the District Court. (*See* Appendix at 1e-1h). In his Petition (hereinafter Pet.) Robinson makes a number of factual assertions which are neither accurate nor supported by the record below, and which convey an inaccurate impression of pertinent portions of the proceedings and the facts below. Significantly, a number of these inaccuracies form the foundation for the Petitioner's arguments with regard to the asserted lack of finality of the state court ruling, and of the Petitioner's purported inability to fully and fairly litigate the issue of probable cause in the underlying state court criminal case. As required by Supreme Court Rule 15.2 the Respondents make the following corrections and/or clarifications to the factual assertions set forth in Robinson's Petition.

A. The petition misrepresents the nature of the state court pre-trial hearing

Petitioner asserts, that "The issue upon which the state Court convened, **that being the guilt or innocence of the criminal charges**, in no way included the issue of the legality of arrest, search or seizure." (Pet. p. 7, emphasis added). This is a serious misstatement of the nature of the state court proceedings which produced the judgment which is the basis for collateral estoppel in this case. *See also* Pet. p. 9 (asserting

that the issues in the criminal case are irrelevant to the present case). The state court proceeding here at issue did not involve the Petitioner's guilt or innocence on the criminal charges. To the contrary, the state court proceeding was a pre-trial hearing on the Petitioner's motion to dismiss all criminal charges, **on the specific grounds that the Respondents lacked probable cause to arrest him**. This is clearly established in the record below by the transcript of the February 13, 1996 state court motions hearing. At that time, in response to the court's inquiry as to the first motion, the Petitioner's counsel stated:

> The first one is probably the most important (sic) would be a **probable cause hearing or dismiss or quash on the grounds there was not probable cause for the initial arrest** and everything that existed came out of that initial arrest. **We would ask at this time to do a probable cause hearing.**

(*See* J.A. at 270 *l.* 23-271 *l.* 3) (emphasis added). So too, at the conclusion of argument on that motion the trial judge stated:

> Counsel, I'm going to find from the entirety of the record **in this probable cause hearing** that has been presented to me that the facts presented, again, in their totality are reliable and credible and sufficiently (sic) to cause a reasonable person to believe that the suspects in this case the defendants, both defendants, were involved in committing a crime or had committed a crime. With that in mind I'm going to deny the motion to dismiss.

(*See* Appendix at 1j, emphasis added). There can be no doubt that the "legality of arrest, search or seizure", as determined by the state court's holding that probable cause existed, was the specific issue before the court during the pre-trial hearings.

B. The petition misrepresents the facts and circumstances relevant to the dismissal of criminal charges pursuant to Robinson's plea bargain following the denial of his motion to dismiss for lack of probable cause.

In his petition Robinson sets out his version of what transpired the day following the denial of his motion to dismiss the indictments against him on unspecified Fourth Amendment grounds (*See* Pet. p. 6), the specific grounds in fact being lack of probable cause to arrest. (*See* J.A. p. 270 *l.* 23 - 271 *l.* 3). He asserts that the prosecutor "unilaterally decided to dismiss **the criminal charges at issue**", allowed him "to attend pre-trial intervention **on other charges**", and that "The **drug charges were dropped** and following successful completion of the pre-trial intervention program-the misconduct in office and contraband charges **were dismissed as well**." (Pet. p. 6-7, emphasis added). Contrary to the inference created by Petitioner's assertions that the dismissal of the "drug charges" was unconditional and unrelated to the dismissal of the other four charges, there is no evidence that the prosecutor's actions as to the several indictments were either unilateral or unrelated as the Petitioner implies.

Rather, it is established by the record below that by the terms of the plea bargain the Petitioner was permitted to enter pre-trial intervention on four (4) misdemeanor indictments,

and prosecution was **conditionally** ended on those indictments, as well as on the two (2) felony indictments for "Possession with Intent to Distribute Marijuana" and "Conspiracy to Possess with Intent to Distribute Marijuana". The latter two (2) indictments appear to be the ones the Petitioner refers to as "**the criminal charges at issue** in this case". Each of the six (6) indictments was endorsed with the following identical language: **"2/14/96 Prosecution ended without prejudice w/ leave to reindict, pending successful completion of PTI."** (*See* J.A. pgs. 462 - 473, emphasis added). So too, the record below establishes that it was made clear in the proceedings before the state trial judge that the plea bargain was a "package deal" dismissing all six (6) indictments, contingent on completion of PTI, and that if the Petitioner did not successfully complete PTI the prosecutor could then proceed on all six indictments. (*See* J.A. p. 459 *l.* 14 - 24).

Similarly, there is no evidence that it was a "unilateral decision of the prosecutor" which purportedly "took away any avenue to review the state Judge's ruling." (Pet. p. 7). Rather, the record below (*See* J.A. p. 460 *l.* 7-25) establishes that what prevented further review of the trial court's finding of probable cause was the knowing and voluntary decision by the Petitioner, with the advice of his retained counsel, to go into pre-trial intervention rather than go forward with the jury trial. The state trial judge at that time specifically informed Robinson that it was Petitioner's decision as to whether to go into pre-trial intervention or to have a jury trial, and that a jury was standing by in the jury room if he wanted a trial. Robinson then and there acknowledged that he had talked to his lawyer about pre-trial intervention and that it was his decision to waive the jury trial.

REASONS FOR DENYING THE WRIT

As set out above, and contrary to the Petitioner's assertions, collateral estoppel was correctly applied below to preclude relitigation of the existence of probable cause to arrest, the specific issue determined in the state court motion hearing. So too, state court appeal of the finding of probable cause to arrest was precluded by the Petitioner's voluntary entry into a plea bargain, not by any unilateral action of the prosecutor.

The claim in Robinson's factually inaccurate petition appears to be that the opinion below conflicts with prior rulings of this court, presumably that the Petitioner must have had a full and fair opportunity to litigate his claim. The gravamen of the Petitioner's argument appears to be that because he did not have an opportunity to appeal, the judgment below was not final and he therefore had only a partial, as opposed to a full and fair, opportunity to litigate the issue of probable cause. The decision below was plainly a correct application of settled law, and does not warrant review by this Court.

A. The state court ruling denying the Petitioner's pre-trial motion to dismiss all criminal charges for lack of probable cause to arrest was final for purposes of collateral estoppel which properly barred relitigation of probable cause in the action under 42 U.S.C. § 1983

Petitioner's argument that the finding of probable cause by the state court should not be given preclusive effect because it was not final for purposes of appeal is without merit. Even if the purported quotation from *State v. McMillan*, 189 S.C. 444, 1 S.E.2d 626 (1939) could be found

in that case, it has no merit or application in the context of collateral estoppel. "[F]inality for purposes of appeal . . . is not necessarily the finality that is required for issue preclusion purposes. The availability of judicial review is merely one factor to consider in determining whether issue preclusion applies." *John Morrell & Company v. Local Union 304A*, 913 F.2d 544, 563 (8th Cir. 1990), *cert. denied*, 500 U.S. 905, 111 S. Ct. 1683, 114 L. Ed. 2d 78 (1991). The Third Circuit has likewise noted that, "[u]nlike claim preclusion, the effectiveness of issue preclusion, sometimes called collateral estoppel, does not require the entry of a judgment, final in the sense of being appealable." *In Re: Brown*, 951 F.2d 564, 569 (3rd Cir. 1991), *citing* Restatement (Second) of Judgments § 13 (1982). Similar holdings are found in other circuits including the Fifth, *Cycles, Ltd. v. Navistar Financial Corporation*, 37 F.3d 1088, 1091 (5th Cir. 1994); Seventh, *Carr v. CIGNA Securities, Inc.*, 95 F.3d 544, 546 (7th Cir. 1996); and Federal, *Pharmacia & Upjohn v. Mylan Pharmaceuticals, Inc.*, 170 F.3d 1373, 1381 (Fed. Cir. 1999).

The law is well settled that, as stated in pertinent part in Restatement (Second) Judgments, § 13 (1982) ". . . for purposes of issue preclusion (as distinguished from merger and bar), 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." This statement of the rule is quoted favorably in *Luben Industries, Inc. v. United States*, 707 F.2d 1037, 1040 (9th Cir. 1983) and in *Miller Brewing Company v. Jos. Schlitz Brewing Co.*, 605 F.2d 990, 996 (7th Cir. 1979), *cert. denied*, 444 U.S. 1102, 100 S. Ct. 1067, 62 L. Ed. 2d 787 (1980). In *Miller* the court further held that "[t]o be 'final' for purposes of collateral estoppel the decision need only be immune, as a practical

matter, to reversal or amendment." *Id.* Collateral estoppel does not require a judgment which ends the litigation and leaves nothing for the court to do but execute the judgment, but includes many dispositions which, though not final in that sense, have nevertheless been fully litigated. *Metromedia Co. v. Fugazy*, 983 F.2d 350, 366 (2nd Cir. 1992), *cert. denied*, 508 U.S. 952, 113 S. Ct. 2445, 124 L. Ed. 2d 662 (1993).

In this regard, a number of courts have quoted with approval Judge Friendly's observation in *Lummus Company v. Commonwealth Oil Refining Co.*, 297 F.2d 80 (2nd Cir. 1961), *cert. denied*, 368 U.S. 986, 82 S. Ct. 601, 7 L. Ed. 2d 524 (1962) that, " 'Finality' in the context here relevant [collateral estoppel] may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again." *Id.* at 89. *See e.g.*, *O'Reilly v. Malon*, 747 F.2d 820, 823 (1st Cir. 1984); *Dyndul v. Dyndul*, 620 F.2d 409, 412 n.8 (3rd Cir. 1980); and *Swentek v. USAIR, Inc.*, 830 F.2d 552, 561 (4th Cir. 1987). Indeed, it is that statement, as quoted by the Fourth Circuit in *Swentek*, upon which the District Court relied in the present case. (*See* App. 1j).

In *John Morrell & Company v. Local Union 304A*, 913 F.2d 544 (8th Cir. 1990), *cert. denied*, 500 U.S. 905, 111 S. Ct. 1683, 114 L. Ed. 2d 78 (1991), the court observed that, "[r]ecent decisions have relaxed traditional views of the finality requirement by applying issue preclusion to matters resolved by preliminary rulings. . . ." *Id.* at 564. In this regard, although not specifically addressing the issue of finality, Courts of Appeal in the Sixth, Seventh, Tenth, and Eleventh Circuits have sustained the application of collateral estoppel to bar relitigation of Fourth Amendment issues in actions under 42 U.S.C. § 1983, where appellate review of

preliminary rulings in state court criminal proceedings had been foreclosed.

In *Smith v. Thornburg*, 136 F.3d 1070 (6th Cir. 1998), *rehearing denied*, 144 F.3d 409 (6th Cir. 1998), appeal from a finding of probable cause in a state court preliminary hearing had been precluded when the grand jury subsequently dismissed the charges. On appeal from the district court's grant of summary judgment in the subsequent § 1983 action for violation of Fourth Amendment rights, the court of appeals held that where the plaintiff's counsel had examined several witnesses, the accused had been afforded a full and fair opportunity to litigate the existence of probable cause, and was therefore barred by collateral estoppel from relitigating the issue in his § 1983 action. *Id.* at 1077. *See also Coogan v. City of Wixom*, 820 F.2d 170, 175 (6th Cir. 1987) applying collateral estoppel to bar relitigation of probable cause in a § 1983 action, where appeal from a state court finding of probable cause at a pre-trial motion to quash had been precluded by dismissal of the charges for failure to provide a speedy trial.

The Tenth Circuit likewise applied collateral estoppel to bar relitigation of the issue of probable cause in *Hubbert v. City of Moore, Okl.*, 923 F.2d 769 (10th Cir. 1991). There, probable cause to arrest had been found in a state court preliminary hearing at which Hubbert was represented by counsel who cross examined the arresting officers. Appeal from the state court finding of probable cause was precluded by the acquittal of the accused, who thereafter brought an action in federal court under § 1983 asserting that her arrest had been without probable cause. The Tenth Circuit held that Hubbert was estopped from relitigating the issue of probable cause in the § 1983 action as "the question of

probable cause is conclusively determined at a preliminary hearing when the parties have had a full and fair opportunity to litigate that issue." *Id.* at 773. The court specifically rejected Hubbert's contention that there was a genuine issue of fact as to whether she had been denied a full and fair opportunity to litigate the issue of probable cause because the preliminary hearing was "tainted" by false or misleading testimony of the arresting officers. In so doing the court noted that it's review of the record revealed that Hubbert had an opportunity to fully and fairly litigate the issue as:

> Her counsel had ample opportunity to present evidence, review evidence the prosecution presented, and cross examine the witnesses against her. We hold no genuine issue of fact remains because probable cause was fully and fairly litigated in the prior criminal proceeding and cannot be relitigated in this civil action.

Id. at 773.

In *Guenther v. Holmgreen*, 738 F.2d 879 (7th Cir. 1984), *cert. denied*, 469 U.S. 1212, 105 S. Ct. 1182, 84 L. Ed. 2d 329 (1985), the Seventh Circuit affirmed the application of collateral estoppel to bar relitigation of probable cause in a § 1983 action brought following the acquittal of the accused in a state criminal action. Probable cause to arrest the accused had been found, and his motion to dismiss on that ground had been denied, in a preliminary state court evidentiary hearing prior to being acquitted. In affirming the grant of summary judgment on the basis of collateral estoppel the court observed that:

> . . . since Guenther invited a state criminal proceeding which permitted him to fully and fairly litigate both the sufficiency and the integrity of the evidence supporting probable cause, the policies underlying the collateral estoppel doctrine–judicial economy and consistency of judgments–would be frustrated if we were to permit him to relitigate those claims in federal court. In passing § 1983, "[Congress did not intend] to allow relitigation after a full and fair hearing simply because the state court's decision may have been erroneous." *Allen v. McCurry*, 449 U.S. at 101, 101 S. Ct. at 418.

Id. at 889.

So too, in *Coney v. Smith*, 738 F.2d 1199 (11th Cir. 1984), the Eleventh Circuit affirmed, *per curiam*, the application of collateral estoppel in a § 1983 action to bar relitigation of the issue of the legality of the arrest and search of the accused. Appellate review of the state court ruling on the legality of the arrest had been precluded by a subsequent guilty plea. The court there recognized that this Court held in *Haring v. Prosise*, 462 U.S. 306, 103 S. Ct. 2368, 76 L. Ed. 2d 595 (1983) that a defendant convicted on a guilty plea in state court is not precluded by collateral estoppel "from seeking recovery of damages under § 1983 for alleged Fourth Amendment violations *that were never considered in state proceedings.*" *Id.* at 1199 (italics added by the court). The court held however that "Coney litigated the issue of illegality of arrest and search **prior to his plea of guilty**." and *Haring* therefore did not apply. (*Id.* at 1200, emphasis added).

From the standpoint of finality, the present case is factually similar to *Smith*, *Coogan*, *Hubbert*, *Guenther*, and *Coney*, where appeal from the finding of probable cause at the preliminary motions stage of the state criminal proceedings was precluded by subsequent dismissal or acquittal of the accused. Here also, the Petitioner cross examined witnesses and offered evidence which was accepted by the court. This Court held in *Allen v. McCurry*, 449 U.S. 90, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980) that in order to have preclusive effect, the prior state proceeding must have afforded a full and fair opportunity to litigate the issue. Subsequently, the Court clarified this requirement when it held in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982) that: "state proceedings need do no more than satisfy the minimum procedural requirements of the Fourteenth Amendment Due Process Clause in order to qualify for the full faith and credit guaranteed by federal law." *Id.* at 481, 102 S. Ct. at 1897. There can be no doubt that these requirements were met in the state court proceeding in the present case.

This case differs somewhat from *Smith*, *Coogan*, *Hubbert*, *Guenther*, and *Coney*, in that here the dismissal precluding appellate review was the result of a voluntary plea bargain. In that regard however, this case is similar to the Fourth Circuit case of *Leonard v. George*, 178 F.2d 312 (4th Cir. 1949), *cert. denied*, 339 U.S. 965, 70 S. Ct. 1000, 94 L. Ed. 1374 (1950). In *Leonard* the plaintiff procured the dismissal of criminal charges against him by means of a compromise in which he paid a sum of money to the party who had sworn out the criminal warrant against him. He then brought an action for malicious prosecution. Applying South Carolina law the Fourth Circuit held that by procuring the dismissal of the charges by means of a compromise, the plaintiff was estopped from relitigating the issue of probable

cause in the later malicious prosecution action. In so holding the court observed that:

> The basis of the rule is . . . that **the plaintiff, by entering into the compromise and securing the dismissal of the criminal action thereby, estops himself from contending that it was instituted without probable cause.**

Id. at 314 (citation omitted, emphasis added). Just as the plaintiff in *Leonard* was estopped under South Carolina law from contending in a malicious prosecution action that the criminal action was instituted without probable cause, the Petitioner here is collaterally estopped from relitigating the issue of the existence of probable cause in his § 1983 action by the state court ruling finding probable cause.

B. It is unnecessary for this court to consider whether collateral estoppel was correctly applied to preclude re-litigation of the issue of probable cause because the courts below held that the Respondents were entitled to qualified immunity as they had an objectively reasonable belief that probable cause existed to believe that the Petitioner had committed or was committing a criminal offense.

Even if this Court were to determine that collateral estoppel was incorrectly applied to preclude the relitigation of the existence of probable in the Petitioner's § 1983 action, such a determination would have no practical effect on the outcome of this case. In addition to holding that the relitigation of the existence of probable cause was barred by collateral estoppel, the District Court held that the Respondents were entitled to qualified immunity as to the

Petitioner's three causes of action in which the existence of probable cause was a controlling issue. (App. 1o). The court there clearly and correctly held that the Respondents "had an objectively reasonable belief that probable cause existed that the [Petitioner] had committed or was committing a criminal offense." The Petitioner has not sought certiorari on the issue of qualified immunity.

CONCLUSION

For the foregoing reasons the Respondents herein respectfully pray that this Court deny the Petition for Writ of Certiorari to the Fourth Circuit Court of Appeals.

Respectfully submitted,

WILBURN BREWER, JR.
THOMAS C. R. LEGARÉ, JR.*
NEXSEN PRUET JACOBS & POLLARD, LLP
Attorneys for Respondents
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

* *Counsel of Record*

Dated: January 11, 2000